

## **SEARCH AND SEIZURE — Inventory searches — federal cases —**

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An inventory search is the search of property lawfully seized and detained, in order to ensure that it is harmless, to secure valuable items (such as might be kept in a towed car), and to protect against false claims of loss or damage. *Whren v. United States*, 517 U.S. 806, 811, 116 S.Ct. 1769, 1773 n.1 (1996). To be valid, an inventory search must conform to a standardized and established procedure and must be motivated by a “concern to inventory [the items] rather than to search for other incriminating evidence.” *United States v. Bowhay*, 992 F.2d 229, 230 (9th Cir. 1993) *citing United States v. Feldman*, 788 F.2d 544, 553 (9th Cir.1986). An inventory search is invalid, however, if it is a pretext for an investigative search. *Id.* at 231. If an inventory search is conducted for both inventory and investigatory purposes, the inventory search is valid. *Id.* (“When the police conduct would have been the same regardless of the officer's subjective state of mind, no purpose is served by attempting to tease out the officer's “true” motivation.”) *citing Horton v. California*, 496 U.S. 128 (1990) (Court rejects argument that “plain view” seizure requires inadvertent discovery, in part because the Court prefers “application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer”).

In *United States v. Bowhay*, 992 F.2d 229 (9th Cir. 1993), the Ninth Circuit upheld an inventory search against a claim that the inventory search was a pretext for an investigatory search. In *Bowhay* an officer was investigating a burglary at a storage facility and saw Bowhay and another man coming out of a building carrying a black satchel with two syringes protruding from it. The other man threw a bag under a car

when he saw the officer, and a search of the abandoned bag revealed drugs. A drug dog then alerted on Bowhay's satchel and the officer reached into the bag and removed an envelope containing drugs. The officer then took the satchel to the police station where the police performed a full inventory search, finding drugs, drug sales records, a gun, and \$2,000 in cash. Bowhay contended that the inventory search was not valid because it was a pretext for an investigatory search. The Ninth Circuit upheld the search, finding that the police department had a standard procedure requiring that everything brought to the police station be inventoried. The Court reasoned:

In a pretext case, only the investigative motive is bona fide. In this case, on the other hand, the officer had dual bona fide motives: to search for "narcotics or weapons," and to compile an inventory of the bag's contents.

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In this case, the department's policy was to search everything; the officer had no discretion. Because of this, the presence of an investigative motive does not invalidate the inventory search.

*Id.* at 231.

While the police are required to have standardized procedures for inventory searches, these procedures need not be unduly rigid but may be modified to fit the individual concerns facing an officer. *United States v. Feldman*, 788 F.2d 544 (9th Cir. 1986). In *Feldman*, a man had robbed a bank by handing a teller a typed note stating that he had a gun in his briefcase. Six weeks later, the defendant, who had a criminal record and was on parole, was arrested when he returned a stolen rental car. The police department had a policy mandating inventory searches of all stolen vehicles. Officers conducted an inventory search of the car in the rental lot and found evidence linking the defendant to the bank robbery, including the typed note, a zippered

briefcase, and an empty gun holster. They asked the defendant where the gun was, and he told them there was a toy gun in the briefcase. Fearing that there might be a real gun in the car, the officers immediately conducted a thorough search of the car, opening the briefcase, and found other evidence. The defendant argued that the evidence should be suppressed because the police did not have a written policy concerning where inventory searches were to be performed and that thus the officers had too much unfettered discretion. The Ninth Circuit held that the inventory search was conducted in accordance with the department's policy. *Id.* at 533. Additionally, the decision to conduct an on-the-spot inventory of the rental car was reasonable, because of the presence of the holster, the defendant's criminal record, and his parole violation. *Id.*

Although standardized criteria or established routine must regulate opening of containers found during inventory searches, police officers may be allowed sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself. *Florida v. Wells*, 495 U.S. 1, 4 (1990). Thus, while policies of opening all containers or of opening no containers are unquestionably permissible, it would be equally permissible to allow the opening of closed containers whose contents officers determine they are unable to ascertain from examining the containers' exteriors. *Id.* Such an exercise of judgment based on concerns relating to purposes of inventory searches does not violate the Fourth Amendment. *Id.*